U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 24 January 2006

CASE NO.: 2003-BLA-05709

In the Matter of

BILLY LEE HUNT
Claimant

v.

McCOY ELKHORN COAL CORP.
Self-insured thru
JAMES RIVER COAL COMPANY
c/o ACORDIA EMPLOYERS SERVICE
Employer

and

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS
Party in Interest

Appearances:

Kristie M. Goff, Esquire
For Claimant

Lois A. Kitts, Esquire
For Employer/Carrier

Before: Janice K. Bullard
Administrative Law Judge

DECISION AND ORDER

This proceeding arises from a claim for benefits under the Black Lung Act, 30 U.S.C. §§ 901-945 ("the Act") and the regulations issued thereunder, which are found in title 20 of the Code of Federal Regulations. Regulations referred to herein are contained in that Title.

Benefits under the Act are awarded to coal miners who are totally disabled within the meaning of the Act due to pneumoconiosis. Pneumoconiosis, commonly known as black lung, is a dust disease of the lungs resulting from coal dust inhalation.

On April 11, 2003, this case was referred to the Office of Administrative Law Judges for a formal hearing. DX 33.[1] Subsequently, this case was assigned to me. I held a formal hearing in Pikeville, Kentucky on May 10, 2005, at which time the parties had full opportunity to present evidence and argument. On August 31, 2005, Employer filed a brief. This decision is based upon consideration of the record and the arguments of the parties.

I. ISSUES

(1) whether Claimant timely filed his claim for benefits;

(2) whether Claimant has any dependents for the purposes of augmentation;

(3) whether Claimant has pneumoconiosis;

(4) whether Claimant's pneumoconiosis arose out of coal mine employment;

(5) whether Claimant suffers from a totally disabling respiratory impairment[2]; and

(6) whether Claimant's disability is due to pneumoconiosis.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Procedural Background

Billy Lee Hunt, (hereinafter referred to as "Claimant") filed a claim for benefits under the Act on March 14, 2001. DX 2. On January 27, 2003, the District Director awarded benefits to Claimant. DX 30. In a letter dated February 6, 2003, Employer timely requested a formal hearing before the Office of Administrative Law Judges. DX 31.

B. Factual Background

Claimant was born on September 14, 1947. DX 2. Claimant married Lorene Honaker Hunt on June 21, 1969. DX 11. Mrs. Hunt passed away on December 5, 2002 from breast cancer. DX 12 & TR at 25. Claimant testified that he last worked in coal mine employment in 1995. TR at 22. Claimant stated that he was employed running a shuttle car, coal drill and miner. TR at 22. All of his work was performed underground, with the exception of five years that Claimant worked at the tipple. TR at 23. Claimant testified that he worked in a dusty environment. TR at 23.

Claimant began working in the coal mines in 1967. TR at 22. Claimant stopped working in 1995. TR at 22. Claimant stated that he began to experience breathing problems two or three

[1] In this Decision and Order, "DX" refers to Director's Exhibits; "CX" refers to Claimant's Exhibits; "EX" refers to Employer's Exhibits; "TR" refers to the Hearing Transcript; and "EB" refers to Employer's Brief.

[2] Employer noted in its Brief that whether Claimant is disabled is not an issue in this matter. Rather, at issue is whether Claimant's disability is due to pneumoconiosis. *See,* EB at 16.

years before he left his work in the mine. TR at 23. Additionally, Claimant stated that he "can't do nothing. I have no air." Id.

Claimant testified that he receives treatment for his breathing problems from Dr. Paul Maynard every three months. TR at 23-24. Dr. Maynard prescribed Albuterol, Asthmacort and Survivair for his breathing problems. TR at 23. Claimant testified that he never smoked. TR at 24.

C. Length of Coal Mine Employment

The District Director determined that Claimant established 22 years of coal mine employment. The parties stipulated at the time of the hearing that Claimant has at least 17 years of coal mine employment. TR at 21. I find that the record supports crediting Claimant with 22 years of coal mine employment.

D. Timeliness of Claimant's Claim for Benefits

The Act provides that, "[a]ny claim for benefits by a miner shall be filed within three years after . . . (1) a medical determination of total disability due to pneumoconiosis." 30 U.S.C. 932 (f). The regulations implementing the Act require that the determination of total disability due to pneumoconiosis is communicated to the miner or a person responsible for the miner's care. § 725.308(a). Further, the regulations provide a "rebuttable presumption that every claim for benefits is timely filed." § 725.308(c).

The Benefits Review Board ("the Board") addressed the limitation issue in Adkins v. Donaldson Coal Mines, 19 B.L.R. 1-36 (1993). First, the Board stated that "a 'medical determination' must be rendered by a physician, but may include . . . a state workers' compensation board finding based on medical conclusions . . . ." Id. at 1-41. The Board then stated that § 725.308 requires a written medical report that the administrative law judge finds is reasoned, documented and probative and which indicates total respiratory disability due to pneumoconiosis such that the claimant was aware of the total disability. Id. at 1-42. Further, the Board decided that the phrase "communicated to the miner" requires that the miner receives an actual written report that discloses the miner's disability due to pneumoconiosis. Id. at 1-43. The Board stated that an oral statement to the miner is not sufficient. Id.

Employer is arguing that Claimant did not file his claim for benefits within the required limitations period and that as a result, his claim should be denied. EB at 21-22. Claimant did not testify at the hearing in this matter as to when he was first told that he suffered from totally disabling pneumoconiosis. Employer relies on Claimant's deposition testimony in believing that the claim was not timely filed. EB at 21. Employer further acknowledges that Claimant did not receive a written report stating that he suffered from pneumoconiosis. EB at 21. In his deposition testimony, Claimant testified that he was told to leave the mines by Dr. Casey, his then treating physician, because he was suffering from severe chronic obstructive pulmonary disease. DX 6 at 8. Employer argues that the existing law should be extended to include this situation where a claimant was told by a physician that he suffers from a totally disabling impairment without a written report. EB at 21. I decline to make that leap. I find that

Claimant's testimony is not sufficient to rebut the presumption that his claim was timely filed. Initially, I note that the statute of limitations does not begin to run until a medical determination of total disability due to pneumoconiosis is made. *See,* 30 U.S.C. 932(f). It is not clear that at the time that Claimant was told that he suffered from COPD that he understood that condition to be within the legal definition of pneumoconiosis. Claimant also did not receive any written report from Dr. Casey indicating that this disease is encompassed within the definition of pneumoconiosis. A physician's diagnosis that a miner has pneumoconiosis is not tantamount to a determination that the miner is totally disabled as a result of the disease. The finding of pneumoconiosis and the finding that the claimant is disabled as a result of the disease are two separate elements a claimant must prove to be entitled to benefits under the Act. Claimant never testified in his deposition that he was aware that he was totally disabled due to pneumoconiosis.

A review of the evidence reveals that Dr. Casey prepared a letter dated April 11, 2002 in which she opined that Claimant was totally disabled as a result of pneumoconiosis. DX 17. While she notes that Claimant began complaining of shortness of breath in 1995, at that time, he was treated for acute bronchitis without relief. She does not state anywhere in her letter when she diagnosed Claimant as suffering from pneumoconiosis. She acknowledges that Claimant suffered from a severe pulmonary impairment as early as May 1995 but she does not indicate when she made the determination that impairment was due to pneumoconiosis.

For these reasons, I find that Employer did not meet its burden of rebutting the presumption that this claim was timely filed.

E. Entitlement

Because this claim was filed after the enactment of the Part 718 regulations, Claimant's entitlement to benefits will be evaluated under Part 718 standards. In order to establish entitlement to benefits under Part 718, Claimant bears the burden of establishing the following elements by a preponderance of the evidence: (1) the miner suffers from pneumoconiosis, (2) the pneumoconiosis arose out of coal mine employment, (3) the miner is totally disabled, and (4) the miner's total disability is caused by pneumoconiosis. Director, OWCP v. Greenwich Colliers, 512 U.S. 267 (1994).

1. Presence of Pneumoconiosis

Section 718.201(a) defines pneumoconiosis as a "chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment" and "includes both medical, or 'clinical,' pneumoconiosis and statutory, or 'legal,' pneumoconiosis." Section 718.201(a)(1) and (2) defines clinical pneumoconiosis and legal pneumoconiosis. Section 718.201(b) states:

> [A] disease "arising out of coal mine employment" includes any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment.

There are four means of establishing the existence of pneumoconiosis, set forth at § 718.202(a)(1) through (a)(4).

(1) x-ray evidence § 718.202(a)

(2) biopsy or autopsy evidence § 718.202(a)(2)

(3) regulatory presumptions § 718.202(a)(3)

a) § 718.304 - Irrebuttable presumption of total disability due to pneumoconiosis if there is evidence of complicated pneumoconiosis.

b) § 718.305 - Where the claim was filed before January 1, 1982, there is a rebuttable presumption of total disability due to pneumoconiosis if the miner has proven fifteen (15) years of coal mine employment and there is other evidence demonstrating the existence of totally disabling respiratory or pulmonary impairment.

c) § 718.306 - Rebuttable presumption of entitlement applicable to cases where the miner died on or before March 1, 1978 and was employed in one of more coal mines prior to June 30, 1971.

(4) Physician's opinion based upon objective medical evidence §718.202(a)(4).

a. Chest X-Ray Evidence

Under § 718.202(a)(1), the existence of pneumoconiosis can be established by chest x-rays conducted and classified in accordance with § 718.102.[3] The current record contains the following chest x-ray evidence:

Date of x-ray	Date Read	Exhibit No.	Physician	Radiological Credentials	I.L.O. Classification
7/11/01	7/11/01	DX 15	I. Hussain	None	2/1
7/11/01	7/31/01	DX 15	N. Sargent	BCR; B	Read for quality only
7/11/01	5/28/02	DX 16	J. Wiot	BCR; B	Negative
11/8/01	11/8/01	EX 1	D. Rosenberg	B	Negative

[3] A B-reader ("B") is a physician who has demonstrated a proficiency in assessing and classifying x-ray evidence of pneumoconiosis by successful completion of an examination conducted by the United States Public Health Service. 42 C.F.R. § 37.51. A physician who is a Board certified radiologist ("BCR") has received certification in radiology of diagnostic roentgenology by the American Board of Radiology, Inc., or the American Osteopathic Association. 20 C.F.R. § 727.206(b)(2)(iii) (2001).

10/11/03	10/11/03	EX 4	A. Dahhan	B	Negative

It is well established that the interpretation of an x-ray by a B-reader may be given additional weight by the fact-finder. Aimone v. Morrison Knudson Co., 8 B.L.R. 1-32, 1-34 (1985); Martin v. Director, OWCP, 6 B.L.R. 1-535, 1-537 (1983). The Benefits Review Board has also held that the interpretation of an x-ray by a physician who is a B-reader as well as a Board-certified radiologist may be given more weight than that of a physician who is only a B-reader. Scheckler v. Clinchfield Coal Co., 7 B.L.R. 1-128, 1-131 (1984). In addition, a judge is not required to accord greater weight to the most recent x-ray evidence of record, but rather, the length of time between the x-ray studies and the qualifications of the interpreting physicians are factors to be considered. McMath v. Director, OWCP, 12 B.L.R. 1-6 (1998); Pruitt v. Director, OWCP, 7 B.L.R. 1-544 (1984); Gleza v. Ohio Mining Co., 2 B.L.R. 1-436 (1979).

There are three chest x-rays in evidence in this matter. The film taken on July 11, 2001 was interpreted as positive for pneumoconiosis by Dr. Imtiaz Hussain, who possesses no particular expertise in interpreting chest x-rays. Dr. Nicholas Sargent reviewed the July 11, 2001 x-ray for quality purposes and made no finding as to the existence of pneumoconiosis. Dr. Jerome Wiot, who is both a Board-certified radiologist and a B-reader, also reviewed the July 11, 2001 x-ray and found no evidence of pneumoconiosis. Based on my review of the evidence and considering the qualifications of the physicians interpreting this x-ray, I find that the evidence does not support a finding that this x-ray evidence is positive for the existence of pneumoconiosis.

Drs. David Rosenberg and A. Dahhan each secured a chest x-ray as part of their examinations of Claimant. Both of these physicians, who are B-readers, found that the chest x-rays did not show any evidence of pneumoconiosis. Therefore, I find that these x-rays are also negative for the presence of pneumoconiosis.

Based on the foregoing, I find that the x-ray evidence does not support a positive finding of pneumoconiosis.

b. Biopsy or autopsy evidence, § 718.202(a)(2)

A determination that pneumoconiosis is present may be based on a biopsy or autopsy. § 718.202(a)(2). That method is unavailable here because the current record contains no such evidence.

c. Regulatory Presumptions, § 718.202(a)(3)

A determination of the existence of pneumoconiosis may also be made by using the presumptions described in §§ 718.304, 718.305 and 718.306. Section 718.304 requires x-ray biopsy or equivalent evidence of complicated pneumoconiosis, which is not present in this case. Section 718.305 is not applicable because this claim was filed after January 1, 1982. Section 718.306 is only applicable in the case of a deceased miner who died before March 1, 1978. Since none of these presumptions is applicable, the existence of pneumoconiosis has not been established under § 718.202(a)(3).

d. Physicians' Opinions, § 718.202(a)(4)

The fourth way to establish the existence of pneumoconiosis under § 718.202 is set forth as follows in subparagraph (a)(4):

> A determination of the existence of pneumoconiosis may also be made if a physician exercising sound medical judgment, notwithstanding a negative X-ray, finds that the miner suffers or suffered from pneumoconiosis as defined in § 718.201. Any such finding shall be based on objective medical evidence such as blood gas studies, electrocardiograms, pulmonary function studies, physical performance tests, physical examination, and medical and work histories. Such a finding shall be supported by a reasoned medical opinion.

The record contains the following physicians' opinions.

Dr. Imtiaz Hussain

Dr. Hussain examined Claimant on behalf of the Department of Labor on July 11, 2001. DX. 15. Claimant's complaints at the time of his examination included daily wheezing, dyspnea, cough and sputum production. Id. Dr. Hussain noted that Claimant never smoked. Id.

Dr. Hussain reviewed Claimant's chest x-ray taken on July 11, 2001, and interpreted that x-ray as positive for pneumoconiosis. Additionally, Dr. Hussain reviewed the results of a ventilatory study he performed on the same date. Dr. Hussain diagnosed Claimant with pneumoconiosis based on Claimant's chest x-ray and his history of coal dust exposure. DX 15. Dr. Hussain listed coal dust exposure the primary cause of Claimant's pneumoconiosis. Id. Further, Dr. Hussain stated that Claimant has a moderate pulmonary impairment, which was caused by pneumoconiosis. Id. Dr. Hussain went on to opine that Claimant does not have the respiratory capacity to perform his last coal mine employment or a job requiring similar effort based on Claimant's "impaired effort tolerance and dyspnea."

Dr. Baretta R. Casey

Dr. Casey authored a letter, dated April 11, 2002. DX. 17. Dr. Casey indicated that Claimant has been her patient since August 11, 1994. She indicated that Claimant first began complaining of shortness of breath on January 11, 1995 and was treated for acute bronchitis without resolution. Claimant's symptoms of shortness of breath and productive cough continued. Dr. Casey noted that a May 1, 1995 pulmonary function study showed a severe obstructive ventilatory impairment. Dr. Casey states that this study is consistent with obstructive airway disease related to coal dust exposure and pneumoconiosis. She has been treating Claimant with inhalers. Dr. Casey went on to outline Claimant's history of coal mine employment as well as his symptoms, including dyspnea and two pillow orthopnea. Based on the fact that Claimant has never smoked, his history of coal dust exposure and the results of the

pulmonary function study, Dr. Casey diagnosed Claimant as suffering from coal workers' pneumoconiosis. Id.

Dr. Paul Maynard

Dr. Maynard authored a letter dated September 11, 2003. CX 2. Dr. Maynard indicates in that letter that he has been treating Claimant since December 1, 2002. He states that Claimant suffers from an obstructive pulmonary defect with a severe pulmonary impairment. Id. Dr. Maynard opines that Claimant's lung volume is consistent with obstructive airway disease and the impairment is permanent and irreversible. Id.

Dr. David M. Rosenberg

Dr. Rosenberg authored a report dated March 11, 2005 detailing his examination of Claimant on November 8, 2001. EX 1. Dr. Rosenberg notes that at the time of the examination, Claimant was 56 years old and a former coal miner. In addition to his own examination, Dr. Rosenberg reviewed the medical reports contained in the record in this matter. Id. Dr. Rosenberg noted that Claimant was employed in coal mine employment from 1967 through 1995, all of which was underground with the exception of 4 years. Claimant had worked as a driller, shooter, foreman, shoveled the belt line and spread rock dust. Dr. Rosenberg noted that this was strenuous employment and Claimant never wore a respirator.

On examination, Claimant exhibited an intermittent cough and decreased breath sounds without rales, rhonci or wheezing. He noted symptoms including shortness of breath, cough, sputum production and hypertension. It was further noted that Claimant has never smoked.

Based on his review of the medical evidence, as well as his examination, Dr. Rosenberg opined that Claimant did not suffer from pneumoconiosis. Id. Dr. Rosenberg stated that Claimant suffers from Chronic Obstructive Pulmonary Disease; however, he opined that based on the available literature, the marked reduction seen in Claimant's FEV1 is disproportionate in relation to his decreased FVC value and is not seen with coal workers' pneumoconiosis. Dr. Rosenberg went on to state that Claimant's lungs are clear and that he has a normal TLC value, normal diffusing capacity and normal gas exchange. Id. All of this indicates to Dr. Rosenberg that Claimant does not suffer from pneumoconiosis. Claimant does suffer from severe airflow obstruction with "marked" response to bronchodilator. This leaves Claimant incapable of performing his last coal mine employment. Dr. Rosenberg opined that Claimant's severe impairment "based on markedly decreased FEV1" is not seen in with simple pneumoconiosis. Dr. Rosenberg concluded that Claimant suffers from severe, disabling Chronic Obstructive Pulmonary Disease unrelated to the inhalation of coal dust.

Dr. Rosenberg also testified at a deposition on April 26, 2005. The transcript of that deposition was submitted into evidence as EX 2. Dr. Rosenberg testified that he is Board certified in internal medicine and pulmonary medicine. EX 2 at 4. He also testified that he is a certified B-reader. Id.

Dr. Rosenberg testified that he examined Claimant on November 11, 2001, at which time he documented Claimant's symptoms, personal history and coal mine employment history. EX 2 at 5-6. Dr. Rosenberg noted 28 years of coal mine employment. EX 2 at 6. Dr. Rosenberg opined that Claimant's pulmonary function testing showed a severe obstruction with significant bronchodilator response and a normal diffusing capacity. EX 2 at 7. Dr. Rosenberg went on to state that the degree of Claimant's obstruction, without restriction and the significant bronchodilator response, indicates an "asthmatic type of reaction." EX 2 at 8. Claimant's airflow obstruction "with marked air trapping and the lungs being overexpanded with air being caught in them" is not the type of pattern seen with an obstructive defect as a result of coal dust inhalation. EX 2 at 10. This information led Dr. Rosenberg to conclude that Claimant does not suffer from coal workers' pneumoconiosis or any condition encompassed within the legal definition of coal workers' pneumoconiosis. EX 2 at 11. Bronchodilator response is not seen with coal workers' pneumoconiosis, leading Dr. Rosenberg to conclude that Claimant's airflow obstruction was not "caused by or hastened by coal dust exposure." EX 2 at 9.

Dr. A. Dahhan

Dr. Dahhan examined Claimant on October 11, 2003, and authored a report dated October 23, 2003. EX 4. Dr. Dahhan noted 28 years of coal mine employment ending in 1995 due to back pain. Id. Dr. Dahhan further noted that Claimant never smoked. Claimant's symptoms were documented as an occasional cough with intermittent wheezing, use of an inhaler, dyspnea on exertion, 2 pillow orthopnea and hypertension. Id. Claimant's chest examination revealed good air entry without crepitation, rhonci or wheezes.

Dr. Dahhan conducted a pulmonary function study at the time of his examination, but indicated that the testing was invalid due to poor effort. Based upon Claimant's occupational and clinical histories, as well as the objective medical testing, Dr. Dahhan found no evidence of occupational pneumoconiosis or "pulmonary disability secondary to coal dust exposure." Id. Dr. Dahhan based this conclusion on his examination of Claimant's chest, the normal blood gas results and a negative chest x-ray interpretation. Id. Dr. Dahhan indicated that it is impossible to adequately assess Claimant's ventilatory capacity due to his poor performance on the pulmonary function study. Dr. Dahhan found no evidence of total or permanent disability, leading the doctor to conclude that Claimant retains the pulmonary capacity to return to his previous coal mine employment or a job requiring comparable physical demand.

Dr. Dahhan was deposed in connection with this matter on December 3, 2003. The transcript of this deposition was offered at EX 5. Dr. Dahhan testified that he is Board-certified in internal medicine and pulmonary disease and is a certified B-reader. EX 5 at 4-5. Dr. Dahhan reviewed the occupational and medical histories obtained at the time of his examination of Claimant. EX 5 at 6-7. Dr. Dahhan stated that Claimant's arterial blood gas testing showed normal results. EX 5 at 8. He further stated that although the technician noted good cooperation and comprehension at the time of the pulmonary function study, the spirometry does not meet the American Thoracic Society standards, thus rendering the study invalid. EX 5 at 9. This is indicated by the inconsistent effort shown on the flow volume loop. EX 5 at 10. Dr. Dahhan found no evidence to support a finding of occupational lung disease. EX 5 at 11. Dr. Dahhan concluded that Claimant retains the respiratory capacity to perform his last coal mining job or

comparable work. Id. He further concluded that Claimant does not suffer from any pulmonary impairment related to coal workers' pneumoconiosis. Id.

Discussion

A medical opinion is well-documented if it provides the clinical findings, observations, facts and other data the physician relied on to make a diagnosis. Fields v. Island Creek Coal Co., 10 B.L.R. 1-19 (1987). An opinion that is based on a physical examination, symptoms and a patient's work and social histories may be found to be adequately documented. Hoffman v. B & G Construction Co., 8 B.L.R. 1-65 (1985). A medical opinion is reasoned if the underlying documentation and data are adequate to support the findings of the physician. Fields, *supra.* A medical opinion that is unreasoned or undocumented may be given little or no weight. Clark v. Karst-Robbins Coal Co., 12 B.L.R. 1-149 (1989).

Following his review of Claimant's medical records and his examination of Claimant, Dr. Rosenberg concluded that Claimant did not have pneumoconiosis, but has COPD. I find Dr. Rosenberg's opinion to be entitled to great weight. In rendering his opinion, he reviewed all of the available medical evidence, as well as conducting his own examination of Claimant. Dr. Rosenberg provides ample reasoning for why Claimant's condition is not attributable to any condition that is encompassed within the legal definition of pneumoconiosis as Claimant's condition did not arise from coal dust exposure. While COPD is encompassed within this definition, it is only so if the condition arises from exposure to coal dust. § 718.201. Dr. Rosenberg makes clear that Claimant's condition is not a result of any such exposure. Therefore, I find that Dr. Rosenberg's opinion is entitled to great weight.

In his report dated July 11, 2001, Dr. Hussain reached the conclusion that Claimant was totally disabled as a result of pneumoconiosis brought on by his coal mine employment. He based his diagnosis on Claimant's chest x-ray and his history of coal dust exposure. I have discounted Dr. Hussain's interpretation of the x-ray evidence; therefore, his opinion is entitled to less weight as it is not based on the objective medical evidence contained in the record. I further find Dr. Hussain's opinion entitled to less weight because it is internally inconsistent. Dr. Hussain finds the existence of pneumoconiosis and attributes to it a moderate degree of impairment. Later, Dr. Hussain states that Claimant is unable to return to his previous coal mine employment due to his respiratory capacity. These findings are contradictory. If Claimant is only moderately impaired, then one cannot say that is totally disabled. This designation would be less of an issue, but Dr. Hussain was provided with a form to designate Claimant's degree of disability and he chose "moderate" over "severe" or "totally." Therefore, I find his opinion entitled to less weight as it is not well-reasoned.

Dr. Casey has been Claimant's treating physician since 1994. Therefore, she may be entitled to certain weight due to this relationship with Claimant. However, it is impossible to assess whether Dr. Casey is entitled to this deference because the necessary factors to be considered are not included in the letter. The regulations state that the nature of the relationship, the duration of the relationship, the frequency of the treatment and the extent of the treatment all must be considered when determining the weight to afford a treating physician's opinion. § 718.104(d). All that is known is that Dr. Casey has treated Claimant since 1994. It is not

possible to appropriately assess the relationship between Claimant and Dr. Casey due to the lack of evidence. Therefore, Dr. Casey's opinion is not entitled to any greater weight as Claimant's treating physician.

Dr. Casey outlined Claimant's history of coal mine employment and his job responsibilities and determined that he is totally disabled. She further based her opinion on the medical data available to her as his treating physician. Dr. Casey states that she arrived at a diagnosis of coal workers' pneumoconiosis based on the pulmonary function testing. I find this opinion to be entitled to significant weight because her diagnosis is based on the objective medical evidence available to her and is therefore well-reasoned.

Dr. Dahhan concluded that "insufficient medical evidence to justify a diagnosis of clinical or legal pneumoconiosis." EX 4. The doctor interpreted a chest x-ray performed in conjunction with his examination of Claimant as negative for pneumoconiosis. Dr. Dahhan based his opinion on his chest x-ray reading as well as the objective testing performed at the time of his examination. While Dr. Dahhan admits that it is impossible to adequately assess Claimant's respiratory function due to the lack of a valid pulmonary function study, I find that his opinion is well-reasoned and based on the objective medical evidence. He reviewed Claimant's medical history, as well as his occupational history and determined that Claimant does not suffer from any occupationally related pulmonary impairment. He found the clinical examination of Claimant's chest to produce normal results. This finding is further bolstered by his review of the radiological evidence and the blood gas testing. I find that Dr. Dahhan's opinion is the most well-reasoned and based on the objective medical data. Therefore, I find his opinion to be entitled to great weight.

Considering the physician opinion evidence as a whole, I find that it does not demonstrate that Claimant has pneumoconiosis. Considering all of the evidence together I find that Claimant has not established the existence of pneumoconiosis.

2. Pneumoconiosis arose out of coal mine employment

A miner who is suffering or suffered from pneumoconiosis and was employed for ten years or more in one or more coal mines is entitled to a rebuttable presumption that the pneumoconiosis arose out of such employment § 718.203(b). As previously stated, the parties admitted to at least ten years of coal mine employment, and I have credited him with 22 years of coal mine employment. However, because Claimant has not established that he has pneumoconiosis, he is not entitled to this presumption, and cannot meet his burden with respect to this element of entitlement.

3. Claimant is totally disabled

In order for Claimant to prevail, he must establish that he is totally disabled due to a respiratory or pulmonary condition. Total disability is defined in § 718.204(b)(1) as follows:

> A miner shall be considered totally disabled if the miner has a pulmonary or respiratory impairment which, standing alone

> prevents or prevented the miner (i) [f]rom performing his or her usual coal mine work; and (ii) [f]rom engaging in [other] gainful employment in a mine or mines.

§ 718.204(b)(1). Non-pulmonary and non-respiratory conditions, which cause an "independent disability unrelated to the miner's pulmonary or respiratory disability" have no bearing on total disability under the Act. § 718.204(a). Additionally, § 718.204(a) provides that:

> If, however, a non-pulmonary or non-respiratory condition or disease causes a chronic respiratory or pulmonary impairment, that condition shall be considered in determining whether the miner is or was totally disabled [under the Act].

Employer has stipulated that Claimant is totally disabled as a result of a respiratory disease as evidenced by the pulmonary function study evidence. EB 16. I find that the objective evidence of record supports this conclusion.

4. Total disability due to pneumoconiosis

Claimant bears the burden of proving that pneumoconiosis is a substantial contributor to his total respiratory disability. § 718.204(c)(1). Sections 718.204 (c)(1)(i) and (ii) provide that pneumoconiosis is a "substantially contributing cause" of the miner's disability if it:

> (i) Has a material adverse effect on the miner's respiratory or pulmonary condition; or
>
> (ii) Materially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment.

§ 718.204(c)(1)(i), (ii). Disability due to pneumoconiosis may be established by a documented and reasoned medical report. § 718.204(c)(2).

As Claimant has failed to establish the presence of pneumoconiosis under § 718.202(a), Claimant cannot establish total disability due to pneumoconiosis under § 718.204(c)(2). I find that the medical opinion evidence establishes that Claimant is disabled from a pulmonary condition. However, I find that the evidence does not demonstrate that Claimant's disability is due to pneumoconiosis.

III. CONCLUSION

Based on my review of the evidence, I find that Claimant has failed to establish that he suffers from pneumoconiosis and that he is disabled due to pneumoconiosis. Considering Claimant has failed to establish two of the necessary elements of entitlement, it is unnecessary to decide any dependency issues.

ATTORNEY'S FEE

The award of an attorney's fee is permitted only in cases in which the Claimant is found to be entitled to benefits under the Act. Since benefits are not awarded in this claim, the Act prohibits the charging of any fee to Claimant for representation services rendered in pursuit of his claim.

ORDER

The claim of Billy Lee Hunt for benefits under the Act is hereby DENIED.

A

Janice K. Bullard
Administrative Law Judge

Cherry Hill, New Jersey

NOTICE OF APPEAL RIGHTS: If you are dissatisfied with the administrative law judge's decision, you may file an appeal with the Benefits Review Board ("Board"). To be timely, your appeal must be filed with the Board within thirty (30) days from the date on which the administrative law judge's decision is filed with the district director's office. *See* 20 C.F.R. §§ 725.458 and 725.459. The address of the Board is: Benefits Review Board, U.S. Department of Labor, P.O. Box 37601, Washington, DC 20013-7601. Your appeal is considered filed on the date it is received in the Office of the Clerk of the Board, unless the appeal is sent by mail and the Board determines that the U.S. Postal Service postmark, or other reliable evidence establishing the mailing date, may be used. *See* 20 C.F.R. § 802.207. Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

After receipt of an appeal, the Board will issue a notice to all parties acknowledging receipt of the appeal and advising them as to any further action needed.

At the time you file an appeal with the Board, you must also send a copy of the appeal letter to Donald S. Shire, Associate Solicitor, Black Lung and Longshore Legal Services, U.S. Department of Labor, 200 Constitution Ave., NW, Room N-2117, Washington, DC 20210. *See* 20 C.F.R. § 725.481.

If an appeal is not timely filed with the Board, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 20 C.F.R. § 725.479(a).